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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FELICIA VIDRIO and PAUL BRADLEY, individually, and on behalf of all others similarly situated,

Plaintiff(s),

v.

UNITED AIRLINES, INC., and DOES 1 through 50, inclusive,

Defendant(s).

Case No. 2:15-cv-07985-PSG-MRW

DEFENDANT UNITED AIRLINES, INC.'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

Hearing Date: January 9, 2017
Time: 1:30 p.m.
Place: Courtroom 880
Judge: Hon. Phillip Gutierrez

NOTICE OF MOTION

TO PLAINTIFFS FELICIA VIDRIO, PAUL BRADLEY, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 9, 2017, at 1:30 p.m., or as soon thereafter as this matter may be heard in Courtroom 880 of the above-entitled Court, located at 255 E. Temple Street, Los Angeles, California, 90012, Defendant United Airlines, Inc. ("Defendant" or "United") will move, and hereby does move, pursuant to Federal Rules of Civil Procedure 56, for summary judgment as to the First Cause of Action (Illegal Wage Statement PAGA Penalties) and Second Cause of Action (Illegal Wage Statements) filed in this Action by Plaintiffs Felicia Vidrio and Paul Bradley ("Plaintiffs").

United's motion should be granted because the undisputed facts show that Plaintiffs and the class members did not work principally in California, so to apply California Labor Code Section 226 to their claims would violate the presumption against the extraterritorial application of California law and the dormant Commerce Clause. Plaintiffs' claims also fail because two federal laws preempt their claims: the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.* and the Airline Deregulation Act, 49 U.S.C. § 41713; and because United complied with the requirements of Sections 226(a)(2), 226(a)(8), and 226(a)(9). United's Motion is based on this Notice of Motion; the supporting Memorandum of Points and Authorities; United's Separate Statement of Undisputed Facts filed herewith; the Declaration of Adam KohSweeney (and exhibits thereto) filed herewith; the Declaration of Mark Kilayko filed herewith; the Declaration of Anna Mikuta (and exhibits thereto) filed herewith; all pleadings and papers on file with the Court in this action; and such other matters as may be presented to the Court at or before the hearing.

//

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Dated: November 8, 2016

O'MELVENY & MYERS LLP
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By: /s/ Adam P. KohSweeney
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PRELIMINARY STATEMENT

Plaintiffs Felicia Vidrio and Paul Bradley ("Plaintiffs") allege that Defendant United Airlines, Inc. ("United") violated three subdivisions of California Labor Code Section 226 ("Section 226") by listing a P.O. Box rather than a physical address on the pay advices it issues to flight attendants, by not listing the total hours flight attendants worked each pay period, and by not listing the hourly rates that apply to each flight attendant and the total number of hours worked at each rate. Although Plaintiffs ***assume*** that Section 226 applies to them and the class members simply because they are California residents, the law is clear that it is the location where work is performed—not the employee's state of residence or any other factor—that determines whether a state's labor and employment laws apply. Because class members performed over eighty-three percent of their work as United flight attendants outside of California, Section 226 does not apply, and would be unconstitutional as applied in any event. Plaintiffs' claims thus cannot survive summary judgment. Further, even if California law could be applied to the class, federal statutes preempt Plaintiffs' claims and the undisputed facts show that United complied with the requirements of Section 226. For these reasons, the Court should grant United's Motion for Summary Judgment.

First, the presumption against extraterritorial application bars Section 226 from applying to work that occurs mostly beyond California's borders. Like all California employment laws, as well as employment laws in other states, Section 226 only governs work that is performed "exclusively, or principally" in California. *Tidewater Marine W. Inc. v. Bradshaw*, 14 Cal. 4th 557, 578 (1996); *Ward v. United Airlines, Inc.*, No. C 15-02309 WHA, 2016 WL 3906077, at *3 (N.D. Cal. July 19, 2016) (noting that California courts consistently "focus[] on the 'job situs test,' which considers where an employee 'principally' worked"); *Sarviss v. Gen. Dynamics Info. Tech., Inc.*, 663 F. Supp. 2d 883, 900 (C.D. Cal. 2009) ("[T]he determinative issue is whether an employee works principally in California.");

Priyanto v. M/S Amsterdam, No. CV-07-3811AHMJTLX, 2009 WL 175739, at *7 (C.D. Cal. Jan. 23, 2009); *O'Neill v. Mermaid Touring, Inc.*, 968 F. Supp. 2d 572, 578 (S.D.N.Y. 2013). It is undisputed that class members performed, on average, less than ***seventeen*** percent of their work within California's borders. Accordingly, Section 226 does not apply to Plaintiffs' claims. Moreover, to apply Section 226 here would violate the dormant Commerce Clause. *Ward*, 2016 WL 3906077 at *6; *Hirst v. SkyWest, Inc.*, No. 15-C-02036, 2016 WL 2986978, at *10-11 (N.D. Ill. May 24, 2016); *United Airlines, Inc., v. Indus. Welfare Comm'n*, 211 Cal. App. 2d 729, 748 (1963), disapproved of on other grounds by *IWC v. Super. Ct.*, 27 Cal. 3d 690 (1980).

Second, Plaintiffs' claims are preempted by two federal laws that protect the autonomy of the airline industry: (1) the Railway Labor Act ("RLA"), which preempts claims that would require the Court to interpret the provisions of airline employees' collective bargaining agreements ("CBAs"), *see Hawaiian Airlines v. Norris*, 512 U.S. 246, 252 (1994); and (2) the Airline Deregulation Act ("ADA"), which preempts state laws that are "related to" an air carrier's "price[s], route[s], or service[s]," 49 U.S.C. § 41713(b). The RLA preempts Plaintiffs' claims because the Court will have to interpret the CBAs governing the class members' employment to determine whether class members were even paid an hourly rate based on hours worked in a particular pay period, as opposed to other forms of pay that are not based on hours worked. The ADA also preempts Plaintiffs' claims because requiring United to comply with Section 226—and, by extension, the patchwork of other state laws governing wage statements—would affect United's routes, services, and prices by limiting the states to which United flight attendants could fly.

Third and finally, even if Plaintiffs could bring their claims under Section 226, their claims fail because the undisputed facts show that United complied with the provisions of Section 226 at issue. United's use of a P.O. box complies with

Section 226(a)(8)'s requirement that a wage statement include the "address of the legal entity that is the employer." Further, it is undisputed that United provides employees with the information required by Sections 226(a)(2) and 226(a)(9) (number of hours worked, applicable hourly rates, and the number of hours worked at each rate) in multiple documents. Because nothing in the statute requires a "wage statement" to be a single piece of paper, and because United's practices satisfy the public policy underlying Section 226, United's practices do comply with Section 226, and Plaintiffs' claims must fail.

FACTUAL BACKGROUND

United is a major passenger airline serving destinations within the United States and around the rest of the world, with headquarters in Chicago, Illinois. The terms and conditions of employment for all U.S.-based United flight attendants are governed by either of two CBAs[1], depending on whether the flight attendant is a heritage United flight attendant or a heritage Continental flight attendant. (Declaration of Anna Mikuta i/s/o United's MSJ, dated November 8, 2016 ("Mikuta Decl.") ¶ 5; United's Separate Statement of Undisputed Facts i/s/o MSJ ("SS") ¶ 14.) Both CBAs were entered into pursuant to the Railway Labor Act between either United or Continental and the Association of Flight Attendants ("AFA"), the union that represents United and former Continental U.S.-based flight attendants. (*Id.*) Pursuant to both CBAs, flight attendants may be employed as Lineholder Flight Attendants or Reserve Flight Attendants. (Mikuta Decl. ¶ 2; SS ¶ 19.) Lineholder Flight Attendants bid on a fixed flight schedule each bid period (a

[1] As noted in the Mikuta Declaration, in September 2016, United entered into a new joint CBA that covers both heritage United flight attendants and heritage Continental (which United acquired in 2010) flight attendants. (Mikuta Decl. ¶ 6; SS ¶ 42.) Most of the terms of this joint CBA are not currently in effect. (Mikuta Decl. ¶ 6; SS ¶ 43.) The only relevant provisions currently in effect are increases to flight attendants' base pay and incentive pay rates. (Mikuta Decl. ¶ 6; SS ¶ 44.) Accordingly, United refers to the UAL and CAL CBAs—which continue to govern Plaintiffs' employment—throughout this Motion except where noted.

time period that corresponds approximately to each calendar month) and fly the schedule that they are eventually assigned. (Mikuta Decl. ¶ 2; SS ¶ 20.) Reserve Flight Attendants, on the other hand, do not receive a predetermined schedule and instead bid to be "on-call" to fly segments on particular days during the bid period. (Mikuta Decl. ¶ 2; SS ¶ 21.) During the class period, Plaintiff Vidrio worked approximately half her time as a Lineholder Flight Attendant and half her time as a Reserve Flight Attendant. (Mikuta Decl. ¶ 3; SS ¶ 22.) Plaintiff Bradley worked primarily as a Lineholder Flight Attendant during the class period, but worked as a Reserve Flight Attendant during some bid periods. (Mikuta Decl. ¶ 4; SS ¶ 22.)

A. Domicile Versus Residence.

A flight attendant's "domicile" means the airport out of which the flight attendant is based for bidding purposes under the CBAs. (Declaration of Mark Kilayko i/s/o United's MSJ, dated November 7, 2016 ("Kilayko Decl.") ¶ 6.) Under the terms of the CBAs, flight attendants domiciled out of a particular airport primarily bid on flights that originate out of that airport. (*Id.*) However, flight attendants are not always domiciled in their state of residence. (*Id.*)

United determines the tax withholding status of flight attendants who fly in more than one state according to the flight attendant's state of residence, in accordance with federal law. (Declaration of Adam KohSweeney i/s/o United's MSJ, Ex. A ("Spars Decl.") ¶¶ 5, 6; SS ¶ 11.) Federal law provides that the wages of an air carrier employee "regularly assigned duties on aircraft in more than one state" are subject only to the income tax laws of the state in which the employee resides or the state where the employee performs over fifty percent of his or her scheduled flight time. 49 U.S.C. § 40116(f)(2). Because flight attendants generally do not spend fifty percent of their flight time in any particular state, United withholds based on a flight attendant's state of residence. Thus, the fact that a given flight attendant is subject to a given state's withholdings does ***not*** mean that they spend the majority of their time in that state. (Spars Decl. ¶ 6; SS ¶ 12.) In fact, there are United flight attendants who reside in California and have California taxes withheld from their income, but do not work at all in California. (*See id.*)

B. The Multi-State Nature of Flight Attendant Work.

Because United has very few flights that both begin and end within California (as compared to flights that only begin or only end in California), the class members[2] spend minimal time actually working in California. (Kilayko Decl. ¶¶ 8, 9; SS ¶¶ 1-9.) United tracks the amount of time each flight attendant spends flying in California on a monthly basis as a percentage of the flight attendant's total flight time. (Kilayko Decl. ¶ 2.) California time consists of time spent on flights that begin and end exclusively in California ("intra-California flights") and on flights to and from California. (*Id.* ¶ 3.) For flights to and from California, the total amount of time spent in California is calculated by measuring the distance from the California airport to the California border (either North, East, South, or West, depending on the direction of flight) and then converting that distance to time. (*Id.* ¶ 4.) California time also includes "ground work" and other flight attendant activity that is arguably in connection with flying but is not, in and of itself, flying. (*Id.* ¶ 7; SS ¶ 10.)

In 2015 and 2016[3], the aggregate data for all flight attendants who were California residents shows that flight attendants who live in California spent ***less than seventeen percent (17%) of their time working in California***. (Kilayko Decl. ¶¶ 8, 9; SS ¶¶ 1, 4.)[4] This number accounts for both intra-California flights, which constituted 1.96 percent in 2015, and time spent within California on flights to and from California, which constituted 13.32 percent of the time in 2015. (Kilayko Decl. ¶¶ 8, 9; SS ¶¶ 2, 3.) This class-wide average masks some amount of variability—for example, some flight attendants who live in California work in California every month, logging a small percentage of their time in the state each month. (Kilayko Decl. ¶ 11a; SS ¶ 7.) Some flight attendants living in California log time in California only infrequently, and may not log any time in California in any given month. (Kilayko Decl. ¶ 11d; SS ¶ 7.) For example, a flight attendant may spend approximately eight percent of her time working in California in June, but no other time in California that year. (Kilayko Decl. ¶ 11d.) Some flight attendants who live in California do not fly or work in California at all. (*Id.* ¶ 11e; SS ¶ 7.)

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[2] All of the class members are United flight attendants who reside in California.

[3] August 2016 is the last month for which United was able to gather complete flight attendant data. (Kilayko Decl. ¶ 5.)

[4] The data for Plaintiffs roughly comports with these numbers. (Kilayko Decl. ¶ 14; SS ¶¶ 8, 9.)

C. Flight Attendant Pay.

United pays flight attendants twice monthly, on the first and sixteenth days of each month. (Spars Decl. ¶ 2; SS ¶ 23.) At the same time that United pays flight attendants, it also issues a pay advice to each flight attendant. (Spars Decl. ¶ 3; SS ¶ 49.) If a flight attendant has opted for direct deposit, then his or her pay advices are accessible electronically through United's internal website or may be received through the mail, at the flight attendant's election. (Spars Decl. ¶ 3.) Flight attendants who receive a paper check receive a paper copy of their pay advice attached to the paycheck. (*Id.*) Flight attendants also have access to documents that summarize their activities and pay for the bid period, called either a Monthly Statement of Earnings for heritage United flight attendants or a Flight Attendant Pay Register ("pay register") for heritage Continental flight attendants. (Mikuta Decl. ¶¶ 13a, 13b; SS ¶¶ 45-47.) Though the documents have different titles, they perform the same function: they allow flight attendants to view their collected activities for the bid period (a time period that corresponds approximately to each calendar month), the number of hours worked at each activity, and the amount of wages the flight attendants earned for each activity. (*Id.*) Once a bid period ends, archived Monthly Statements of Earnings and pay registers remain available to flight attendants. (*Id.*)

The CBAs set forth several methods for calculating flight attendants' pay per pay period, many of which are not based on hours worked. (Mikuta Decl. ¶¶ 7-11.) The first of the two monthly payments flight attendants receive is a "Flight Advance." (Mikuta Decl. ¶ 7; SS ¶ 24.) The Flight Advance payment is based on the flight attendant's expected volume of work for the bid period and is not based on hours worked during the pay period. (*Id.*) Flight Advance payments are calculated differently for heritage United and heritage Continental flight attendants. For heritage United flight attendants, the Flight Advance consists of either a "half Flight Advance"—equivalent to 24.85 hours of pay at the applicable rate—or a "full Flight Advance"—equivalent to 49.70 hours of pay at the applicable rate—depending on how many hours the flight attendant is expected to work during the bid period. (Mikuta Decl. ¶ 7a; SS ¶ 25.) For heritage Continental flight attendants, the Flight Advance consists of forty (40) hours of pay at the applicable rate, or twenty (20) hours for jobshare flight attendants, provided that the flight attendant was on active duty during the previous two weeks. (Mikuta Decl. ¶ 7b; SS ¶ 27.) Because the Flight Advance is based on the flight attendant's expected volume of work, it does not compensate flight attendants for hours actually worked. (Mikuta Decl. ¶ 7; SS ¶ 24.) Flight attendants' second monthly payment also differs based on whether the flight attendant is heritage United or heritage Continental. Heritage United flight attendants receive a second monthly payment that is essentially the higher of: (1) the flight attendant's time spent flying multiplied by an hourly rate; or (2) the Minimum Pay Guarantee ("MPG"), a minimum amount to which a flight attendant is entitled each bid period. (Mikuta Decl. ¶ 8a; SS ¶¶ 28, 29.) Because of this pay structure, heritage United flight attendants are only compensated by the hour if the amount they would earn for flight time is greater than MPG. Heritage Continental flight attendants receive a second monthly payment that consists of twenty-five (25) hours at the flight attendant's applicable base pay, provided the flight attendant was on active duty for the previous two weeks, plus hourly pay earned in excess of sixty-five (65) hours for the previous month and any other pay claims. (Mikuta Decl. ¶ 8b; SS ¶¶ 30, 31.) Heritage Continental flight attendants are also entitled to MPG. (Mikuta Decl. ¶ 11b; SS ¶ 36.) Thus, heritage Continental flight attendants are only compensated by the hour for hours worked above sixty-five per month, and even then only if that hourly pay value exceeds MPG.

MPG is a minimum amount of pay to which a flight attendant is entitled each month that the flight attendant is scheduled to work. (Mikuta Decl. ¶ 11; SS ¶ 32.) For heritage United Lineholder Flight Attendants, the CBA provides for a minimum amount of pay per month, which varies according to flight attendant longevity and whether the flight attendant was assigned to domestic or international flight lines. (Mikuta Decl. ¶ 11a; Mikuta Decl. Ex. A § 5-A-1; SS ¶¶ 33, 34 .) For example, a tenth year flight attendant assigned to domestic lines of flying is entitled to a minimum of $3,066 per month. (*Id.*) Heritage United Reserve Flight Attendants are entitled to a minimum of seventy-eight hours per bid period, paid at the applicable hourly rate that corresponds to the flight attendant's longevity. (*Id.*; Mikuta Decl. Ex. A § 4-D.) For heritage Continental Lineholder Flight Attendants, the CBA provides for MPG by ensuring that flight attendants "will be paid a salary based upon the monetary value of their bid line after adjustment procedures have been completed or all compensation actually earned, whichever is greater." (Mikuta Decl. ¶ 11b; Mikuta Decl. Ex. B § 4-S; SS ¶ 37.) Heritage Continental Reserve Flight Attendants are also entitled to receive at least eighty-three hours of MPG, paid at the applicable base hourly rate. (Mikuta Decl. ¶ 11b; Mikuta Decl. Ex. B § 4-J-1; SS ¶ 38.) For both heritage United and heritage Continental Lineholder Flight Attendants and Reserve Flight Attendants, MPG ensures that flight attendants are not penalized for, among other things, flying short segments or being scheduled to work on a flight that is cancelled. (*See* Mikuta Decl. ¶¶ 11a, 11b.) In any event, MPG does not correspond to—and is not based on—hours worked. (Mikuta Decl. ¶ 11c.)

When flight attendants do receive hourly rates, their hourly rates vary according to a flight attendant's position—that is, whether the flight attendant acts as a lead flight attendant on a particular flight or not—and longevity. (*Id.* ¶ 10; SS ¶ 39.) Further, the hourly rate at which any one flight attendant is paid will vary from month to month, depending on a variety of factors such as which type of aircraft the flight attendant worked on, whether the flight attendant worked overnight, and whether the flight attendant worked on a flight that was understaffed. (Mikuta Decl. ¶¶ 10a-b; SS ¶¶ 40, 41.)

LEGAL STANDARD

Summary judgment is proper if "there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is "material" only when its resolution might affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[I]t is the substantive law's identification of which facts are critical and which facts are irrelevant that governs." *Id.* Where, as here, the plaintiff bears the burden of proof at trial, "the defendant may move for summary judgment by pointing to the absence of facts to support the plaintiff's claim." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1542 (9th Cir. 1989) (internal citations and quotations omitted). Plaintiffs cannot meet this standard for the reasons set forth below.

ARGUMENT

I. UNITED IS ENTITLED TO SUMMARY JUDGMENT BECAUSE CALIFORNIA LAW DOES NOT APPLY TO PLAINTIFFS' CLAIMS.

Plaintiffs' claims fail because California law does not and cannot regulate activity beyond its borders. It is undisputed that the vast majority of the work time of Plaintiffs and the class members occurs outside of California's borders, so to apply Section 226 to their claims would violate the presumption against the extraterritorial application of California law. Moreover, if Section 226 were to apply, the statute would operate in a way that violates the dormant Commerce Clause—which underscores the wisdom of the presumption against extraterritoriality.

A. The Presumption Against Extraterritoriality Bars Plaintiffs' Claims.

The presumption against extraterritoriality is the well-settled principle in California that "the Legislature did not intend a statute to be operative with respect to occurrences outside the state . . . unless such intention is clearly expressed or reasonably to be inferred from the language of the act or from its purpose, subject matter or history." *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1207 (2011) (quoting *Diamond Multimedia Sys, Inc. v. Super. Ct.*, 19 Cal. 4th 1036, 1059 (1999) and *N. Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 4 (1916) (internal quotations omitted)); *see also O'Connor v. Uber Techs., Inc.*, 58 F. Supp. 3d 989, 1004-06 (N.D. Cal. 2014); *Sarviss*, 663 F. Supp. 2d at 900. As far as California labor and employment law is concerned, the presumption dictates that the California Labor Code applies only when the plaintiff-employee ***worked principally in*** California. *Sarviss*, 663 F. Supp. 2d at 900 (focusing on the "situs of employment as opposed to residence of the employee or the employer"). Because Plaintiffs cannot show that they or the class members worked "in California," nor can they show that the California legislature intended Section 226 to apply outside the state[5], the presumption against extraterritoriality completely bars Plaintiffs' claims.

1. The Location of Work, Not the Employee's State of Residence, Determines Which State's Labor and Employment Laws Apply.

Courts in California and nationwide determine the applicability of state wage

[5] Only statutes with express extraterritorial language can meet this standard, and Section 226 does not contains such language. *See, e.g., Cotter v. Lyft, Inc.*, 60 F. Supp. 3d 1059, 1063 (N.D. Cal. 2014).

and hour law by reference to where an employee performs work, not where the employee resides. At least as early as 1976, courts have used the "job situs test" to determine which state's labor and employment laws apply to an employee's claims. The job situs test prevents the application of any one state's laws across the country—an outcome that would result if an employee's state of residence were the determinative factor. *See Oil, Chemical, and Atomic Workers Int'l Union v. Mobil Oil Corp.*, 426 U.S. 407, 418-20 (1976). In *Mobil*, the Court considered whether Texas's right-to-work law invalidated a collective bargaining agreement where employees were hired in Texas (and most lived in Texas) but worked predominantly at sea. *Id.* at 410-21. The Court held that "the employees' predominant job situs," rather than "a generalized weighing of factors or the place of hiring" was what determined whether Texas's law applied, and that because the location of work was primarily outside of Texas, the Texas law did not apply. *Id.* at 418-20. In so holding, the Court noted that the job situs test "minimize[d] the possibility of patently anomalous extra-territorial applications of any given State's right-to-work laws." *Id.* at 418.

On facts functionally identical to those presented here, a California district court recently used the job situs test to hold that California's wage statement requirements did not apply to a class of United pilots because the pilots performed, on average, less than twelve percent of their work within California's borders. *Ward*, 2016 WL 3906077 at *1, 4. The *Ward* court rejected the plaintiff's reasoning that Section 226 should apply based on an employee's state of residence or the state where the employee received wage statements, concluding that such a principle would "yield absurd results." *Id.* at *4. Under plaintiff's reasoning, the court noted, a Nevada employer would have to produce wage statements that complied with Nevada law, as well as the laws of the states where each of its employees resided, while an employee who worked in California but resided elsewhere would not be entitled to the protections of California's wage statement law. *Id.*

As the *Ward* court noted, that a plaintiff resides in California, or that some combination of events giving rise to the plaintiff's claim occurred in California, is insufficient to overcome the presumption against extraterritoriality. Indeed, in *North Alaska Salmon*—the first California case to recognize and apply the presumption—both the plaintiff and the defendant corporation were California residents, yet the California Supreme Court held that the worker's compensation statute, which did not allow for compensation for out-of-state injuries at that time, could not apply to the plaintiff's injuries incurred in Alaska. *See N. Alaska Salmon*, 174 Cal. 1 at 4. And in *Sullivan*, the California Supreme Court rejected the plaintiff's argument that California law should apply because the defendant company was based in California and because the company made decisions about the plaintiff's employment in California. 51 Cal. 4th at 1206. Instead, the Court focused on the location of work, and held that California wage and hour law applied to work "performed in California." *Id.* Several other California courts have come to the same conclusion. *See, e.g., Sarviss*, 663 F. Supp. 2d at 900-01 ("In sum, because [the plaintiff] indisputably spent the vast majority of his employment working outside of California . . . the Court finds that the . . . presumption against extraterritorial application of the wage orders has been left unrebutted."); *Priyanto*, 2009 WL 175739 at *8 ("Plaintiffs cannot show that they work in California, and consequentially cannot show that . . . the California wage and hour laws can be applied to them without violating the presumption against extraterritoriality.").[6]

[6] This principle is not confined to California. Numerous other states and the federal government use the job situs test to determine the applicability of their labor and employment laws. *See O'Neill v. Mermaid Touring, Inc.*, 968 F. Supp. 2d 572, 578-79 (S.D.N.Y. 2013); *Peikin v. Kimmel & Silverman*, P.C., 576 F. Supp. 2d 654, 657 (D.N.J. 2008); *Mitchell v. Abercrombie & Fitch*, No. C2-04-306, 2005 WL 1159412, at *3-4 (S.D. Ohio May 17, 2005); *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 249 (1991), superseded by statute, Civil Rights Act of 1991, § 109(a), 105 Stat. 1077.

Thus, the job situs test determines whether the California Labor Code applies to a plaintiff's claims without violating the presumption against extraterritoriality. While United expects that Plaintiffs will argue that Section 226 should apply to their claims because they and the class members reside in California, there is simply no support for the Court to ignore the established job situs test and read in a residency requirement to these statutes. As the *Ward* court noted, not only is such a requirement contrary to settled precedent, it would also yield confusing and inequitable results. If Section 226 were to apply based on residency, it would relieve employers of any obligation to produce Section 226-compliant wage statements to employees who do work principally in California, but who live out-of-state. This would result in employees who performed similar work for the same employer, at the same location within California, receiving their wage statements in different forms. This interpretation would also create a new requirement for employers to revise their payroll practices for an employee whenever the employee moved across state lines, even if the location of the employee's work did not change. These results would lead to inconsistency and employee confusion in contravention of the purposes behind Section 226.[7]

Nor can Plaintiffs argue that California law should apply to their claims because they received their pay and allegedly deficient wage statements in California. As the California Supreme Court made clear in *Tidewater* and *Sullivan*, and as California district courts like *Ward* and *Sarviss* have found, determining the applicability of the California Labor Code is not a question of choice of law, but rather a constitutional question of whether California law may validly operate outside the state's borders. If the Court were to apply California law based on the location of certain events giving rise to Plaintiffs' claims, it would be adopting logic that would swallow the existing job situs test, for all purposes. Under this logic, a California resident who worked principally or even entirely out-of-state could assert a violation of California's minimum wage or overtime provisions by arguing that he received his pay in California and that therefore, the events giving rise to his cause of action occurred in California. But that is not the law. Applying the job situs test, courts have consistently refused to apply one state's wage and hour laws to claims involving work that was principally performed in a different state—regardless of where the employee lived or received his pay. Plaintiffs cannot articulate any principled reason why this Court should take a different approach.

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[7] *See Morgan v. United Retail, Inc.*, 186 Cal. App. 4th 1136, 1149 (2010) (noting that the purpose of Section 226 is to provide "transparency" as to the calculation of wages).

2. The Class Members Do Not Work Principally in California.

Where, as here, California residents perform *some* work within California's borders but most of their work elsewhere, the job situs test dictates that California wage and hour laws do not apply because employees must work "exclusively, or principally" within California's borders to qualify as California wage earners. *Tidewater*, 14 Cal. 4th at 309; *Sarviss*, 663 F. Supp. 2d at 900 ("[T]he determinative issue is whether an employee principally works in California.").

As an initial matter, it is questionable whether the time class members spent flying above California even qualifies as time spent working within California's borders. *See Hirst v. SkyWest, Inc.*, No. 15-C-02036, 2016 WL 2986978, at *10 n.14 (N.D. Ill. May 24, 2016) ("[I]t might be argued that the IMWL does not apply to any portion of the time [flight attendants] spend in flight over the state of Illinois because that airspace is not within the state's sovereignty."). Unlike the extension of California's borders at sea, which California law specifically addresses, *see* Cal. Const., art. III, § 2; Cal. Gov. Code §§ 170, 171, neither California nor the federal government has spoken as to whether the airspace above California counts as California territory. It is therefore possible that the class members spent virtually *no* time working within California.

But even assuming that the airspace above California qualifies as California territory, the class members did not work "principally" in California. It is undisputed that class members work in a national and international environment that requires them to work primarily outside of California. Indeed, class members, on average, spent less than ***seventeen percent (17%)*** of their total work time within California's borders during the class period. While California courts have not specified the amount of time that is sufficient to consider an employee to work "principally" in California, they have held that spending between eighty and ninety percent of time working outside of California is insufficient to give rise to claims under California's wage and hour law. *Sarviss*, 663 F. Supp. 2d at 899.[8] Plaintiffs thus cannot show that Section 226 applies to the class without violating the presumption against extraterritoriality. Moreover, if the Court determines that Section 226 applies here, it would open the door to a host of other California wage and hour laws applying to flight attendants, which could be enormously problematic. For example, if United were required to provide flight attendants with meal and rest break periods in accordance with California law, long haul flights would be unmanageable.

B. The Dormant Commerce Clause Confirms that California Law Does Not Apply Here.

If the Court were to determine that it could apply Section 226 to Plaintiffs' claims without violating the presumption against extraterritoriality, that application would in turn violate the dormant Commerce Clause because it would unduly burden interstate commerce. In industries where national uniformity is crucial, such as the airline industry, state regulations are especially vulnerable to a dormant Commerce Clause challenge because relatively slight administrative obstacles can be enlarged to significant burdens where nationwide transportation is involved. *See Ward*, 2016 WL 3906077 at *5-6; *Hirst*, 2016 WL 2986978 at *10; *United Airlines*,

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[8] The amount of in-state work performed here is also well below the logical definition of "principally."

Inc. v. Indus. Welfare Comm'n, 211 Cal. App. 2d 729, 748-49 (1963), disapproved of on other grounds by *IWC v. Super. Ct.*, 27 Cal. 3d 690 (1980). Requiring a national airline like United to comply with the many, and often conflicting, wage statement laws of the fifty states (at least thirty-seven of which currently have their own wage statement laws[9]) would impose a burden on interstate commerce that is incommensurate with California's interest in ensuring that its own citizens are adequately informed of their compensation received. This unconstitutional result highlights the fact that the Court should not apply Section 226 to Plaintiffs' claims. *See Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988).

The dormant Commerce Clause is the "negative implication" of the constitution's affirmative grant of legislative power to Congress to "regulate Commerce with foreign Nations, and among the several States." Art. I, § 8, cl. 3; *see also Dennis v. Higgins*, 498 U.S. 439, 447 (1991). The dormant Commerce Clause "has long been recognized as a self-executing limitation on the power of the States to enact laws imposing substantial burdens on [interstate] commerce," *S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984), and has been found to invalidate state employment laws vis-à-vis national airlines. *United Airlines*, 211

[9] *See* Alaska Admin. Code tit. 8, § 15.160(h); Ariz. Rev. Stat. § 23-351(E)-(F); Cal. Lab. Code § 226; Colo. Rev. Stat. § 8-4-103(4); Del. Code Ann. tit. 19 § 1108; D.C. Mun. Regs. tit. 7, § 911.2; Haw. Rev. Stat. § 387-6(c); Idaho Code § 45-609(2); 820 Ill. Comp. Stat. 115/10; Ind. Code § 22-2-2-8; Iowa Code § 91A.6; Kan. Stat. Ann. § 44-320; Ky. Rev. Stat. Ann. § 337.070; Md. Code Ann. Lab. & Empl. § 3-504; Mass. Gen. Laws ch. 149, § 150A; Mich. Comp. Laws § 408.479; Minn. Stat. § 181.032; Mo. Rev. Stat. § 290.080; Mont. Code Ann. § 39-3-101; Nev. Rev. Stat. § 608.100; N.H. Rev. Stat. Ann. § 275:48; N.M. Stat. Ann. § 50-4-2; N.Y. Lab. Law § 195; N.C. Gen. Stat. § 95-25.13; N.D. Admin. Code Rule 46-02-07-02(10); Okla. Stat. tit. 40 § 165.2; Or. Rev. Stat. § 652.610; 34 Pa. Code. § 231.36; 28 R.I. Gen. Laws § 14-2.1; S.C. Code Ann. § 41-10-30; Tex. Lab. Code § 62.003; Utah Code Ann. § 34-28-3; Va. Code Ann. § 40.1-29; Wash. Admin. Code § 296-126-040; W. Va. Code § 21-5-9; Wis. Stat. § 103.475; Wyo. Stat. Ann. § 27-4-101.

Cal. App. 2d at 748-49; *Guy v. IASCO*, No. B168339, 2004 WL 1354300, *6-7 (Cal. Ct. App. June 17, 2004). Where, as here, the state regulation at issue is not facially discriminatory, the state law will violate the dormant Commerce Clause if it places an undue burden on interstate commerce. *See Pike v. Bruch Church, Inc.*, 397 U.S. 137, 142 (1970). The test for whether a state law amounts to an "undue burden" is whether the law's burden on interstate commerce clearly exceeds its local benefits. *Id.*; *see also Bibb v. Navajo Freight Lines*, 359 U.S. 520, 529 (1959) (striking down an Illinois statute that required trucks within the state to use a certain type of mudguard because the law would require trucks to stop at the border to change their mudguards, placing an undue burden on interstate commerce).

The outcome in *United* shows how even relatively slight administrative burdens can be amplified to undue burdens on interstate commerce in the context of the airline industry. In *United*, the California Court of Appeal invoked the dormant Commerce Clause in declining to apply a California regulation regarding reimbursement of uniform expenses to the claims of flight attendants—even those based in California—because reimbursing the uniform expenses of some flight attendants and not others would cause "personnel troubles" that burdened interstate commerce. *See United*, 211 Cal. App. 2d at 735, 748. The court determined that applying the California regulation would result in a "most anomalous situation": attendants based in California would get free uniforms despite most of their work being performed on interstate flights, while attendants based outside of California who worked on flights coming into California would not receive the reimbursement. *Id.* at 748. The court concluded that "[s]uch discrimination is bound to cause personnel troubles and to that extent, at least, a burden on interstate commerce." *Id.* at 748-49. Despite the fact that "the burden may not be very great," the court concluded that "the subject is one which necessarily requires uniformity of treatment" and refused to apply the regulation. *Id.* at 747, 749. Further, the court rejected the notion that the State of California had a prevailing interest in increasing the pay of California-based flight attendants. *Id.* at 749.

More recently, the *Ward* court concluded that the dormant Commerce Clause prohibited the application of Section 226 to a class of United pilots who regularly crossed state lines. *Ward*, 2016 WL 3906077 at *5-6. Acknowledging that requiring United to comply with Section 226 would also force United to comply with a "patchwork" of wage statement laws in other states, the court concluded that this administrative burden on United outweighed any local benefit in enforcing Section 226. *Id.* In Illinois, the *Hirst* court adopted similar reasoning. *Hirst*, 2016 WL 2986978, at *10-11 (refusing to apply Illinois' Minimum Wage Law to flight attendants' claims because doing so "would impose a labyrinth of potentially conflicting wage laws upon [flight attendants] based out of different states and cities, working on the same flights, literally moving through interstate commerce on a daily basis.")

As the *United*, *Ward*, and *Hirst* courts recognized, compliance with Section 226 is far more complicated for a national airline like United than it is for businesses whose operations are contained within California's territorial boundaries. For United to comply with Sections 226, it would have to first analyze the amount of time each of its thousands of flight attendants spend working within California's borders and within the boundaries of each of the fifty states. Then, based on that analysis, it would have to guess how much time working within each state's boundaries gave rise to the application of that state's law, and produce different wage statements for each flight attendant based on that estimation. If the law regarding the contents of wage statements were uniform across the states, or if compliance with California law would mean that United was also in compliance with the less-detailed laws of other states, this may not impose an undue burden on interstate commerce. But this is not the case. The requirements of the thirty-seven states (plus the District of Columbia) who have laws regarding the contents of wage statements entail idiosyncratic, and often conflicting, provisions. For example, unlike California, which does not require employers to list their phone numbers on wage statements, New York requires wage statements to include the employer's phone number in addition to their address, *see* N.Y. Lab. Law § 195(3). Texas law similarly imposes requirements beyond those embodied in Section 226 by requiring that each wage statement "be signed by the employer or the employer's agent." Tex. Lab. Code § 62.003(b). Beyond the contents of wage statements, there is variance in other aspects of wage statements, such as timing. Thus, given the widely-varying requirements of the states' wage statement laws, a California-compliant wage statement could be out of compliance in many other states. Requiring United to navigate this patchwork of state laws, and to tailor its wage statements based on a mere guess as to whether a given state's law applied, would impose significant burdens on United and the interstate transportation system that depends on it. As recognized by the Illinois district court in *Hirst*, the extensive analysis and tailoring to each state's peculiar requirements would slow interstate commerce to an extent that is prohibited by the dormant Commerce Clause.

II. UNITED IS ALSO ENTITLED TO SUMMARY JUDGMENT BECAUSE PLAINTIFFS' CLAIMS ARE PREEMPTED BY FEDERAL LAWS THAT PROTECT THE AUTONOMY OF THE AIRLINE INDUSTRY.

Even if the class members worked entirely within California's borders, Plaintiffs' claims still fail because they are preempted by the Railway Labor Act ("RLA"), which preempts state law claims that require the interpretation of a CBA, and by the Airline Deregulation Act ("ADA"), which preempts state law claims that "relate to" an air carrier's prices, routes, or services.

A. The Railway Labor Act Preempts Plaintiffs' Claims.

In enacting the RLA, "Congress wanted to avoid having the states apply their own state law principles to interpret a federal labor law collective bargaining agreement, leading to inconsistent results." *Fitz-Gerald v. SkyWest Airlines, Inc.*, 155 Cal. App. 4th 411, 420 n.3 (2007), disapproved of on other grounds by *People* *ex rel. Harris v. Pac. Anchor Transp., Inc.*, 59 Cal. 4th 772 (2014). Accordingly, the Supreme Court has held that "[i]f the resolution of a state law claim depends upon the meaning of a collective-bargaining agreement, the application of state law (which might lead to inconsistent results since there could be as many state-law principles as there are States) is pre-empted." *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 399 (1988) (discussing preemption standard under § 301 of the Labor Management Relations Act); *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 263 (1994) (adopting the *Lingle* standard under the RLA).

Courts have concluded that wage and hour claims are dependent upon the interpretation of a CBA where, as here, the claim involves complex, industry-specific pay structures established by a CBA. *Adames v. Exec. Airlines, Inc.*, 258 F.3d 7, 12 (1st Cir. 2001) (quoting from *Livadas v. Bradshaw*, 512 U.S. 107, 122 (1994). In *Adames*, the plaintiff, a flight attendant, claimed that she was "entitled to compensation and benefits commensurate with the provisions of [Puerto Rico] law." *Id.* at 9-10. Under the terms of the applicable CBA, flight attendants were paid "on a monthly basis according to 'hourly applicable rates of pay for scheduled or applicable hours flown, whichever is greater.'" *Id.* at 13. Adopting the reasoning of the district court in a related case, the First Circuit concluded that the RLA preempted plaintiff's claims because the required analysis—which, as in the instant case, involved ascertaining flight time, duty time, and then performing calculations under the CBA—constituted interpretation. *Id.* (quoting from *Burgos v. Exec. Air Inc.*, 914 F. Supp. 792 (D.P.R. 1996)). Similarly, *McKinley v. Southwest Airlines, Co.*, CV 15-02939-AB JPRX, 2015 WL 2431644, at *5 (C.D. Cal. May 19, 2015) concluded that the plaintiff's California wage and hour claims for, *inter alia*, overtime and inaccurate wage statements were preempted by the RLA because they were dependent upon an interpretation of the CBA. As the court explained, to resolve plaintiff's claims, it "would have to examine each form of pay provided by the CBA, determine when that pay was due, and then decide whether the pay should have been included in Plaintiff's regular rate." *Id.* at *6. The court determined that this analysis—which required it to "consider the interaction of multiple CBA provisions"—was "interpretation" of a CBA and dismissed the claims with prejudice. *Id.* at *7, 9. *See also Fitz-Gerald*, 155 Cal. App. 4th at 421; *Blackwell v. SkyWest Airlines, Inc.*, No. 06CV0307DMSAJB, 2008 WL 5103195, at *13-15 (S.D. Cal. Dec. 3, 2008); *Firestone v. Southern California Gas Co.*, 219 F.3d 1063, 1067 (9th Cir. 2000).

As in *McKinley*, here, resolving Plaintiffs' Section 226 claims will require the Court to interpret the complex, multi-category compensation structure for United flight attendants established by the CBAs. A wage statement needs to comply with the requirements of Section 226 only if an employee is paid based on hours worked. Thus, to determine the threshold issue of whether a flight attendant received hourly-based pay as opposed to a flat salary payment, at a minimum the Court would need to review the work actually performed by a given flight attendant, apply this information to two CBAs' complex pay provisions (set out over dozens of pages), and then compare the result of this analysis to information set forth in class members' pay advices, pay registers, and Monthly Statements of Earnings. Under the case law discussed above, this is "interpretation" of a CBA.

In addition, Section 226 is not satisfied merely by listing compensable work time and corresponding hourly rates (or salary) as set forth in the CBA. Rather, whether or not a wage statement is "accurate" for purposes of Section 226 depends upon whether an employer has accurately listed all compensable work time and accurately calculated hourly rates pursuant to California law. *See, e.g., Novoa v. Charter Comm'ns.*, LLC, 100 F. Supp. 3d 1013, 1029 (E.D. Cal. 2015); *Cervantez v. Celestica Corp.*, 618 F. Supp. 2d 1208, 1221 (C.D. Cal. 2009). Therefore, to resolve Plaintiffs' claims, this Court must first resolve the concepts of compensable work time and the corresponding rates of pay in the CBA comply with California wage and hour law. *See cf. Adames*, 258 F.3d at 12-13. This analysis is also "interpretation" under operative law. *Blackwell*, 2008 WL 5103195, at *12; *see also Adames*, 258 F.3d at 13. The need for this analysis also distinguishes this case from other simpler cases where courts have declined to find preemption because a CBA need only be "glanced" at, as opposed to interpreted. *See, e.g.*, *Gregory v. SCIE, LLC*, 317 F.3d 1050, 1053 (9th Cir. 2003).

B. The Airline Deregulation Act Preempts Plaintiffs' Claims.

The ADA also preempts Plaintiffs' claims because applying Section 226 to Plaintiffs' claims would impermissibly impact United's prices, routes, and/or services by limiting the states to which United pilots could fly, based on whether or not the pilot was receiving a wage statement that complied with that state's law. As discussed above in Section I.B., requiring United to comply with Section 226 would expose it not only to the requirements set forth in Section 226, but also to a patchwork of various and often conflicting state regulations regarding wage statements, and other state wage and hour laws. Because some of these laws are conflicting, compliance with all of them would require United to restrict flight attendants' flight schedules to particular states, so as not to trigger competing state wage and hour requirements. Restricting flight attendants' schedules to ensure compliance would impact at least United's routes and services, if not also its prices (as increased compliance costs are passed on to customers), and is therefore preempted by the ADA.

The central purpose of the ADA was to eliminate federal regulation of the rates, routes, and services of airlines in order to allow those aspects of air transportation to be set by market forces. *See* 49 U.S.C. §§ 40101(a)(6), (12)(A); *Northwest v. Ginsberg*, 134 S.Ct. 1422, 1430 (2014). To ensure that states would not undo this deregulation with regulation of their own, the ADA included a broad preemption clause that prohibits states or their political subdivisions from "enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under [the ADA]." 49 U.S.C. § 41713(b)(1). Although the statute does not define the term "related to," the Supreme Court has held that its deliberately broad language evinces a legislative purpose to have an "expansive" preemptive effect. *See Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992).

When determining whether a state law claim is preempted by the ADA, "the *effect* of a state law, regulation, or provision" is what matters, "not its form." *Ginsberg*, 134 S. Ct. at 1430 (emphasis added). Thus, even those laws that facially have nothing to do with the airline industry and only indirectly affect prices, routes, or services, can be preempted. *See, e.g.*, *id.* at 1431 (holding that a customer's contract claims against Northwest stemming from the termination of his frequent flyer account "related to" Northwest's prices, routes, and services and therefore were preempted by the ADA); *see also People ex rel. Harris v. Delta Air Lines, Inc.*, 247 Cal. App. 4th 884, 410-411 (2016) (holding that the ADA preempted state online privacy claims related to airline's alleged failure to include a conspicuous privacy notice on its mobile phone application).

The Northern District of California in *Angeles v. US Airways, Inc.* properly interpreted this precedent to hold that the ADA preempted plaintiffs' meal and rest break claims under California law because requiring US Airways to comply with those provisions "relate[d] to" the airline's prices, routes, and services. *Angeles*, No. C 12-05860 CRB, 2013 WL 622032, at *9 (N.D. Cal. Feb. 19, 2013) ("It is easy to imagine a situation in which a [ramp agent] must, by law, be relieved of duty, but doing so would prevent an aircraft from being fueled or serviced, or cargo from being unloaded such that it would impact the schedule of the point-to-point transportation of passengers or cargo.") *Id.* at *9. The outcome in *Angeles* shows that even generally applicable wage and hour laws, when applied to airlines, can affect an airline's routes and services in a manner that undermines the deregulatory purpose of the ADA. Here, requiring United to comply with Section 226 would not simply impose on United additional costs of doing business. Rather, as acknowledged by the *Angeles* court, it would limit the routes on which United could send its flight attendants based on whether or not that flight attendant was being paid in a manner that complied with any given state's law. This impact on United's routes would slow its services and inevitably increase its prices. As applied to United, Section 226 therefore impacts United's prices, routes, and services and should be preempted by the ADA.[10]

III. EVEN IF SECTION 226 APPLIES TO PLAINTIFFS' CLAIMS, SUMMARY JUDGMENT FOR UNITED IS PROPER BECAUSE UNITED COMPLIED WITH THE PROVISIONS OF SECTION 226AT ISSUE.

A. United Complied with Section 226(a)(8)'s Requirement that the Employer's Address Be Listed on Wage Statements.

Section 226(a)(8) requires that an employer list "the name and address of the legal entity that is the employer." Cal. Lab. Code § 226(a)(8). Nothing in Section 226 or the case law interpreting it says that a P.O. Box, which United lists on its pay advices, is an impermissible form of "address." *See id.*; *see also Novoa*, 100 F. Supp. 3d at 1025 (E.D. Cal. 2015) (listing the requirements for the contents of wage statements). There is therefore no substantive merit to Plaintiffs' claim that United violated Section 226(a)(8).

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[10] This is true notwithstanding the Ninth Circuit's decision in *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014), which held, as a general matter, that California's meal and rest breaks laws were not preempted by the Federal Aviation Administration Authorization Act (which has a preemption provision identical to the ADA's) because those laws represented "generally applicable background regulations" that did not bind Penske to specific prices, routes, or services. *Id.* at 647. This case is not like *Dilts* for two reasons. First, *Dilts* did not involve interstate transportation—all of the class members drove exclusively within California. *See id.* at 640. Second, *Dilts* expressly declined to address the question posed here: whether the ADA or the FAAAA could preempt state laws on an as-applied basis. *Id.* at 648 n.2.

B. United Complied With the Requirements in Section 226(a)(2) and Section 226(a)(9) that the Employer List Total Hours Worked and Applicable Rates.

Finally, United complied with Sections 226(a)(2) and 226(a)(9) by providing all of the required information to class members through pay registers and Monthly Statements of Earnings, to which all flight attendants had continual access; the negotiated terms of the CBAs; and the pay advices that accompanied each flight attendant's pay check. Nothing in Section 226 requires that a "wage statement" consist of a single document—the "wage statement" in the case of the flight attendants is a combination of the pay advice, pay registers (for heritage Continental flight attendants) and Monthly Statements of Earnings (for heritage United flight attendants), and CBA terms. By cross-referencing their pay registers or Monthly Statements of Earnings—which set forth the number of hours a flight attendant worked each bid period— with the amount of wages as detailed in their pay advices and the hourly rates set forth in the CBAs, United flight attendants are able to verify each hourly rate that applied to them and the number of hours they worked at each rate. United has therefore provided wage statements to flight attendants that fully comply with the requirements of Sections 226(a)(2) and 226(a)(9).

CONCLUSION

For the foregoing reasons, United respectfully requests that the Court grant its Motion for Summary Judgment.

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